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STATE OF IDAHO

OFFICE OF THE ATTORNEY GENERAL

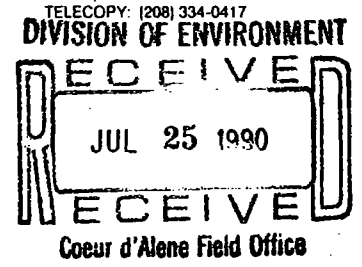
JIM JONES
ATTORNEY GENERAL

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DEPUTY ATTORNEYS GENERAL

July 20, 1990

DIVISION OF ENVIRONMENTAL QUALITY
DEPARTMENT OF HEALTH AND WELFARE
1410 N. HILTON, 2ND FLOOR
BOISE, IDAHO 83706
TELEPHONE: (208) 334-0494
TELECOPY: (208) 334-0417

Allan Stockman
Federal Highway Administration
610 East Fifth Street
Vancouver, Washington 98661-3893



Re: Avery Landing

Dear Mr. Stockman:

I am writing concerning the contamination at the Avery, Idaho site. As I understand it, FHA is the present owner of property that once contained fuel tanks used by the Chicago, Milwaukee Railroad. The railroad has gone through a reorganization. Its successor is CMC Real Estate Corporation (CMC). You apparently were a participant in numerous discussions and a meeting in late 1988 and early 1989 concerning the cleanup of the contamination. Since that time, the Idaho Department of Health and Welfare (Department) has received a memo from FHA stating that FHA has no responsibility for the cleanup, at least on a nuisance theory, because the government has not waived its sovereign immunity for such a claim. The Department has also been negotiating with CMC and Potlatch concerning the cleanup. My most recent letters to these parties are enclosed for your review. As indicated in these letters, the Department would like to get the cleanup underway as soon as possible. To that end, we would like to know whether FHA is willing to contribute to the cost of the cleanup.

FHA has asserted that it cannot be held liable under a nuisance theory because its sovereign immunity bars such a claim which imposes strict liability. However, Section 313 of the Clean Water Act provides that the federal government and its agencies and departments shall be subject to and comply with all federal, state, interstate and local requirements, administrative authority, and process and sanctions respecting the control and abatement of water pollution in the same manner and to the same extent as any nongovernmental entity. Section 313 further provides that it applies notwithstanding any immunity of such agencies, etc. By virtue of Section 313, FHA has waived its sovereign immunity with respect to complying with Idaho's water quality requirements and administrative authority.

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Allan Stockman

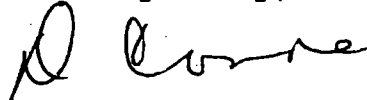
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The Idaho Environmental Protection and Health Act and the state's water quality regulations, specifically IDAPA §§ 16.01.2300,02 and 16.01.2850,04, prohibit the discharge of pollutants and require the responsible persons to collect, remove and dispose of spilled or released material in a manner approved by the Department.

I would appreciate it if you would give me a call or send me a letter by July 30, 1990 regarding whether FHA will contribute to the cost of the cleanup at the Avery site.

Yours very truly,



Douglas M. Conde
Deputy Attorney General

DMC/pg

cc: Cathy Chertudi
Susan Martin
Paul Jehn
Ed Tulloch

Enclosures